



Minnesota Center for Environmental Advocacy

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April 6, 2005

Michael and Becky Vierling
Vierling Farms
13985 Pike Lake Trail NE
Prior Lake, MN 55372-9024

Regional Administrator
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Region V
77 W. Jackson Blvd.
Chicago, IL 60604

Commissioner Sheryl Corrigan
Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, MN 55155-4194

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1200 Pennsylvania Avenue NW
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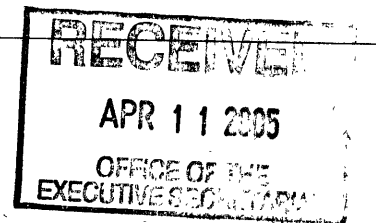
**Re: Vierling Farms
Notice of Intent to Commence Citizen Suit
33 U.S.C. § 1365**

To Addressees Above:

This notice is being provided to you in accordance with the 60-day notice requirements for citizen suits under the Clean Water Act, 33 U.S.C. § 1365 and 40 C.F.R. § 135.2. Please be advised that the Minnesota Center for Environmental Advocacy ("MCEA") intends to commence suit in United States District Court for the District of Minnesota after 60 days from the date of this notice based upon the violations of the Federal Water Pollution Control Act, Chapter 33 U.S.C., as set forth below.

MCEA is a non-profit Minnesota environmental organization, the legal and scientific voice for restoring and protecting Minnesota's environment. MCEA membership consists of citizens living throughout the State of Minnesota. Some MCEA members reside in Prior Lake, Minnesota, on Pike Lake, the waterbody in question here, and in the Prior Lake Spring Lake Watershed District, the Watershed District encompassing Pike Lake in Scott County, Minnesota.

Michael and Becky Vierling d/b/a Vierling Farms (hereinafter referred to as "Vierling") have in the past violated, and continue to violate, the Federal Water Pollution Control Act by discharging pollutants via point source to Pike Lake, Scott County, Minnesota without a National Pollutant Discharge Elimination System ("NPDES"), permit. 33 U.S.C. § 1342.



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30
years
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Vierling discharges pollutants to Pike Lake from their farming and livestock operation located adjacent to the east side of Pike Lake, across Pike Lake Road, (this road is also known as Pike Lake Trail) north of County Highway 42, Scott County, Minnesota. As part of their farming and livestock operation, Vierling operates a cattle feedlot in the location immediately to the east of Pike Lake, adjacent to Pike Lake Road, at which Vierling houses and feeds cattle varying at times from approximately 40 to 100 animals. (Hereinafter referred to as the "Feedlot"). The Feedlot, in which the animals produce animal waste, slopes to a channel through which water flows to Pike Lake. Most, if not all, water draining from the Feedlot, enters the channel. The slope is largely unvegetated. The animals were also previously allowed to enter and defecate in the channel directly. In March of 2005, it did not appear that cattle were actually in the channel. The channel flows approximately west a very short distance, through a culvert under Pike Lake Road and approximately 300 feet into the east side of Pike Lake.

Pollutants from the Feedlot flow directly into the channel, through the culvert and into Pike Lake constituting a point source discharge of pollutants to surface waters. Pollutants have also, from time to time, reached a level such that they are allowed to flow directly across Pike Lake Road and into Pike Lake. The pollutants so discharged are fecal coliform, nutrients phosphorous and nitrogen, and sediments. Vierling does not have, and has never had, an NPDES permit.

In May and June of 1996, the Feedlot conditions described above existed. In April and May of 1998, manure was observed flowing directly from the channel in the Feedlot, through the culvert and into Pike Lake. Also in April and May of 1998, cows were observed in the Feedlot which Feedlot continued to drain to the channel. On April 2, 2001, samples taken at both ends of the culvert demonstrated an MPN/ml of fecal coliform bacteria of greater than 160 from manure flowing directly into Pike Lake. Samples taken from both ends of the culvert on April 12, 2001 showed evidence of fecal coliform at amounts so excessively high, they could not actually be counted by the lab. The results are listed as "confluent growth". See a copy of the 2001 lab results attached hereto as Exhibit A. On March 21, 2005, samples were again taken in and around the channel and the flow into Pike Lake. The lab results for all three samples were fecal coliform colonies, "too numerous to count". See a copy of the 2005 lab results attached hereto as Exhibit B. The fecal coliform water quality standards is 200 colony forming units ("cfu") per 100 milliliters of water. Minn. R. 7050.0222, subp. 4 and 5. Anything in excess of that violates Minnesota law. In 2001 Minnesota Pollution Control Agency staff found Vierling to be an imminent threat to public health and the environment.

In April of 2001 and again in March of 2005, observations of the feedlot and channel were of manure able to flow directly from the channel in the Feedlot, through the culvert and into Pike Lake. On April 12, 2001 cows from the Feedlot were observed in the channel. No vegetation grew in the area and the cows appeared to be in mud and manure up to their knees. Discharges of pollutants have the potential to continue into the future.

Vierling Farms, et al.

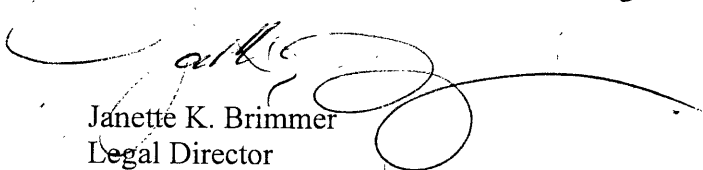
April 6, 2005

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The discharge of pollutants to navigable waters of the United States as described above and without an NPDES permit constitutes a violation of 33 U.S.C. § 1342. MCEA, hereby gives notice of its intent to commence a citizen suit in accordance with 33 U.S.C. § 1365 against Vierling to enforce federal law and require Vierling to obtain an NPDES permit, to immediately abate the violations, and for civil penalties under 33 U.S.C. § 1319(d). MCEA further hereby gives notice of its intent to commence a citizen suit in accordance with 33 U.S.C. § 1365 against the Administrator of the Environmental Protection Agency for failure to perform acts and duties under Chapter 33, U.S.C. by failing to require Vierling to obtain an NPDES permit. MCEA further gives notice of its intent to recover costs in accordance with 33 U.S.C. § 1365(d).

Please do not hesitate to contact the undersigned should you have any questions. Thank you for your prompt attention to this matter.

Sincerely,



Janette K. Brimmer
Legal Director

cc: Steve Jann, EPA Region V
Arnie Leder, EPA Region V
Leo Raudys, MPCA

LABORATORY ANALYSIS REPORT**DATE:** May 8, 2001**PAGE:** 1 Of 1**CLIENT:** MN Center for Environmental
Advocacy
26 E. Exchange St.
St. Paul, MN 55101**PROJECT NO.:** 041201-100199
COLLECTION DATE: 4/12/01
COLLECTED BY: Client
RECEIVED DATE: 4/12/01**CONTACT:** Jeanette Brimmer

ANALYSIS	Sample No.:	45638.001	ANALYSIS
Fecal Coliform Bacteria (SM 9222D)	Sample ID.:	1030 am	DATE
	UNITS	RESULT	4/12/01
	CFU/100 mL	2	
ANALYSIS	Sample No.:	45312.002	ANALYSIS
Fecal Coliform Bacteria (SM 9222D)	Sample ID.:	#2	DATE
	UNITS	RESULT	4/12/01
	CFU/10 mL	Confluent Growth	
ANALYSIS	Sample No.:	45312.003	ANALYSIS
Fecal Coliform Bacteria (SM 9222D)	Sample ID.:	#3	DATE
	UNITS	RESULT	4/12/01
	CFU/10 mL	Confluent Growth	

Note: Due to confluent growth of non-specific bacteria, the number of Fecal Coliform colonies could not be determined, but the presence of Fecal Coliform was confirmed.

CFU/100 mL means Colony Forming Units Per 100 Milliliters.

This report has been reviewed by me for technical accuracy and completeness. The analyses were performed using EPA or other approved methodologies and the results were reported on an "as received" basis unless otherwise noted. The results reported relate only to the items tested. Please contact me if you have any questions or comments regarding this report. Spectrum Labs, Inc. appreciates the opportunity to provide this analytical service for you.

Report Submitted By,

William Scruton
Laboratory Manager

WS:wmc
45638

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EXHIBIT A

March 24, 2005

Ms. Jeannette Brimmer
Minnesota Center For Environmental Advocacy
26 East Exchange Street
Suite 206
Saint Paul, MN 55101

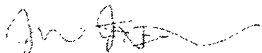
RE: Project: 109504
Project ID: VEIRLING

Dear Ms. Brimmer:

Enclosed are the analytical results for sample(s) received by the laboratory on March 21, 2005. Results reported herein conform to the most current NELAC standards, where applicable, unless otherwise narrated in the body of the report.

If you have any questions concerning this report, please feel free to contact me.

Sincerely,



Jennifer Jensen
Jennifer.Jensen@pacelabs.com

Illinois Certification #: 200011
Minnesota Certification #: 027-053-137
Wisconsin Certification #: 999407970

Enclosures

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REPORT OF LABORATORY ANALYSIS

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Exhibit B

MICROBIOLOGY RESULTS

Project: 109504

Project ID: VEIRLING

Solid results are reported on a dry weight basis.

Lab ID: 109504001	Date Collected: 03/21/05 15:05	Matrix: Water
Sample ID: CREEK #1	Date Received: 03/21/05 16:14	

Analysis	Results	Prepared	By	Analyzed	By	Qual
<i>Fecal Coliforms</i>	Too Numerous to Count			03/23/05 13:00	MJR	1

Lab ID: 109504002	Date Collected: 03/21/05 15:07	Matrix: Water
Sample ID: CREEK #2	Date Received: 03/21/05 16:14	

Analysis	Results	Prepared	By	Analyzed	By	Qual
<i>Fecal Coliforms</i>	Too Numerous to Count			03/23/05 13:00	MJR	1

Lab ID: 109504003	Date Collected: 03/21/05 15:09	Matrix: Water
Sample ID: CREEK #3	Date Received: 03/21/05 16:14	

Analysis	Results	Prepared	By	Analyzed	By	Qual
<i>Fecal Coliforms</i>	Too Numerous to Count			03/23/05 13:00	MJR	1

Date: 03/24/2005

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REPORT OF LABORATORY ANALYSIS

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MICROBIOLOGY RESULTS QUALIFIERS

Project: 109504

Project ID: VEIRLING

PARAMETER QUALIFIERS

DF - Dilution Factor, if reported, represents the factor

ND - Not Detected at or above adjusted reporting limit. applied to the reported data due to changes in sample preparation, dilution of the sample aliquot, or moisture content.

J - Estimated concentration above the adjusted method detection limit and below the adjusted reporting limit.

MDL - Adjusted Method Detection Limit.

S - Surrogate

ANALYTE QUALIFIERS

- [1] Microbiological analysis initiated more than 6 hours but less than 30 hours after sample collection.

Date: 03/24/2005

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REPORT OF LABORATORY ANALYSIS

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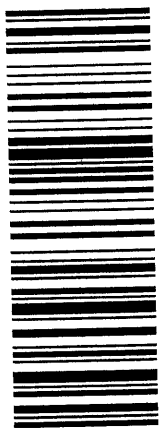




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